

## The Referendum

The former American president Thomas Jefferson remarked, “I know of no safer repository of the ultimate powers of society, than the people themselves”.([www.peoplefirstindia.org](http://www.peoplefirstindia.org))

This holds true for Irish society also. The key to good governance is to design a system that ensures that the public, not their elected servants, are truly the holders of the definitive power of the people. This is done by a referendum. A referendum is a system of legislation involving the referral of proposed laws or constitutional amendments to the electorate for final approval.([www.lectlaw.com](http://www.lectlaw.com)) The use of the referendum to decide major national issues is supported by the vast majority of the Irish people. It is viewed as a highly democratic method of decision-making and as an excellent tool for providing an essential check on politicians. So overall, the Irish experience of referendums would be considered a positive one.

The policies of the state of the Republic of Ireland toward amending the Constitution and referendums are outlined in articles 46 and 47 of Bunreacht na hEireann respectively. These articles refer to the fact that, any provision of the Constitution may be amended by referendum (article 46.2). In Ireland, our Constitution provides that there are no unamendable provisions, this is unlike our European neighbours of France and Germany ([Butler & Ranney 94:80](#)) and it displays a surprisingly liberal attitude for its time.

There are two types of referendum, a referendum to amend the Constitution and a referendum on a proposal other than one to amend the Constitution, called an ordinary referendum. The latter, has never occurred in the Irish case as of yet and is unlikely to, considering it would necessitate a majority of the Seanad opposing the government.

The Irish Constitution can only be changed by a referendum. Under Article 46 of the Constitution, an application to amend the Constitution must be introduced in the Dáil as a

Bill. When the Bill has been passed by both Houses of the Oireachtas,(the Dail and Seanad) it must be submitted to the people for their consent at a referendum. If a majority of the votes cast at the referendum are supportive of the proposal, the Bill is signed by the President and the Constitution is amended as a result. ([www.viron.ie](http://www.viron.ie))

The ordinary referendum is discussed in Articles 27 and 47 of the Constitution, which also provides for a referendum on a proposal other than one to amend the Constitution. An ordinary referendum may take place when the President, on receipt of a joint petition from a majority of the members of the Seanad and not less than one third of the members of the Dáil, and following discussion with the Council of State, comes to a decision that a Bill includes a proposal of such national significance that the desire of the people ought to be determined before the measure becomes regulation.([www.viron.ie](http://www.viron.ie))

The main issues which have been the subject of national referendums in the Republic of Ireland, have related to voting rights, the European Union and issues of a moral nature. The importance of referendums in Irish political life should not be underestimated. It is the only means to legally alter the 1937 constitution that underpins all legislation, and since 1937, a total of twenty-five referendums to amend the Constitution have been held. Seven of which have been rejected. The issues involved have often related to major social issues, including the unique position of the Roman Catholic Church, divorce, and abortion. All of these difficult issues have been put before the people.

Abortion had gone to referendum in 1983 and its legalisation was rejected by a handsome majority of 66.9% at that time. It proved to be an extremely troublesome referendum and its ramifications were many. It came to the fore once more as a result of the infamous X case in 1992. Although this case did not go to the people for a final decision, referendums have arisen from its revelations. This case involved the pregnancy of a thirteen year-old girl as a

result of rape, she wished to be granted permission to travel to the UK to terminate the pregnancy. At the time, abortion was illegal in the Republic of Ireland. The High court ordered an injunction preventing the girl from travelling to England for the abortion, however, the supreme court then overturned this decision on appeal. (Sinnott 95:229) They judged that article 40.3.3 permitted termination of a pregnancy in the State where there was a real and substantial threat to the mothers life, as distinct from her health. It also held that the threat of suicide constituted a threat to the mother's life for this purpose. ([www.irlgov.ie](http://www.irlgov.ie)) This case inspired the triple referendum of November 1992, which related to restrictions on the availability of abortion, the right to travel and the right to information. The former was rejected and the other two approved. The referendum of March 6<sup>th</sup> 2002 is also relevant to this topic, the question on this occasion related to what we, the Irish people, want to say in our constitution about abortion. The liberal 'no' vote secured the narrowest of victories, and so the bill preventing the proposed amendment to make it more difficult for women to secure abortion, is set to become an act of parliament on the condition that it is passed in the Oireachtas in the next 180 days, precisely as its worded. Else the 25<sup>th</sup> amendment will be rendered inoperative.

Other issues worth noting that have been decided by way of the ballot box include the required age to vote, adoption, voting for non-citizens and a variety of matters relating to the type of voting system the country should apply in general and local elections. When Ireland joined the EU in 1972 by way of referendum, a further three referendums were needed to permit the State to adopt subsequent European treaties, such was the uncertainty of the Irish electorate over the issue of Europe in those days.

This scepticism of further integration with the EU has yet to be overcome, it would appear. In June 2001, the people of Ireland were asked to ratify the treaty of Nice, we were one of only three EU members (along with Denmark and France) who held a referendum on whether or

not to do so. The treaty was rejected with a majority of 53.9% of the Irish people voting no, in what was the second lowest referendum turnout in the State's history. This is still a source of major embarrassment to the Government who are under considerable pressure to ratify the treaty in order to keep the momentum of EU integration and enlargement going.

Other matters, such as alterations to the adoption laws and voting for non-citizens, have been largely uncontroversial with the proposed constitutional amendments supported by a great majority of the people. Probably the most striking change in terms of public legislation came about in 1995 when the country narrowly voted to bring in divorce. Less than 10,000 votes separated the two sides. In 1986, the same proposal had been defeated by a 63.5% majority.[www.worldpaper.com](http://www.worldpaper.com))

Of course, one could not consider the main issues of Irish referendums without referring to the issue of Northern Ireland. The Anglo-Irish agreement, commonly known as the Good Friday Agreement, was put to the people of the Republic and the North of Ireland in a referendum on the 22<sup>nd</sup> of May 1998. Turnout was unsurprisingly high in the North, at 87% with 71.1% in favour, while the Republic's was also quite high at 56.3% with 94.4% in favour of the agreement. This result was of great importance to the peace process, it led the way for the amending of Bunreacht na hEireann articles two and three, in which the Republic laid claim to the North of Ireland. And moreover, it forced the UK to concede that once the majority of the people of Northern Ireland want to re-unite with the Republic, the UK will not attempt to prevent it. The development of the Northern Ireland Assembly, who met in June 1998 for the first time, could not have happened but for this agreement also.

There are numerous arguments in favour of the referendum process political issues. Since 1793, nearly 1,000 nationwide referendums have taken place around the world. All the major democracies of the world barring four (the US being one) have held a nationwide

referendum. ([www.limitedgovernment.org](http://www.limitedgovernment.org)) The following benefits of referendums help to explain why this is so.

First of all, referendums are the most legitimate form of political decision-making since it's the vote of the people, which dictates the policy of their government in relation to the issue in question. Basically, referendums are seen as the fairest means by which a nation's government should come to a decision on a matter of national importance. Even individuals who consider that most political decisions should be made by experts in public office, instead of by unacquainted average members of society would admit that the most significant and elementary decisions should in any case be ratified by referendums. (Butler & Ranney 78:25) As Eamon De Valera declared, whilst he recommended our Constitution to the electorate in 1937, "if there is one thing more than another that is clear through this whole constitution, it is the fact that the people are the masters". (Butler & Ranney 94:78)

A second advantage of conducting referendums is the presence of direct democracy, which results from it. This allows citizens to vote directly on public policy issues. Referendums create in contemporary societies, the fundamentals of the most self-governing of all forms of administration. That being direct rule, based on the input of all the people via voting. Also, the use of a referendum can serve to constrain the behaviour of elected officials by curbing their dictatorial tendencies since they know that the voters have the power to review and overturn their decisions. This awareness may also encourage them to avoid opportunistic behaviour ([www.limitedgovernment.org](http://www.limitedgovernment.org)) as well as forcing lobbyists' to attempt to influence all the people, and not just the elite who hold power. Direct democracy also holds the advantage of making difficult issues more likely to be brought to the attention of the people, since citizens can bring such issues to referendum through a petition.

An increase of popular involvement in decision-making is another advantage of referendums. Many conclusions arrived at in Dail Eireann or in the courts, take place a considerable

distance from the majority of the electorate, and as a result, they feel fragmented from the decision-making process. Referendums help to alleviate these concerns and reconnect politics with the people.

A fourth plus of referendums is the educative effect which they on the population, who unavoidably, become better informed on the issues in question. ([www.aceproject.org](http://www.aceproject.org)) Such opportunities for public education on important issues should be taken. Referendums not only stimulate the voters minds, but also make them more aware about politics and the views and pledges of the government itself.

National pride is another advantage of referendums. Since the general public are being given a more direct role to play in the administrative process, they are likely to feel prouder to be a citizen of their country, as their personal preferences are being taken into consideration. It is even debated that if politicians are seen to be concerned about the views of the people, the gap between the governing and the governed will be lessened.

In spite of the above advantages of referendums, there are inevitably potential drawbacks with this system of democracy also.

Firstly, some issues necessitate specific familiarity with the subject matter and contain information that the public may not be able to grasp without difficulty. This usually refers to issues of a very technical or emotionally charged nature. A recent example of this is the referendum conducted here in Ireland at the beginning of the month relating to abortion.

Many voters were unable to decipher which way to vote, due to the complexity of the terms of the referendum proposal, and as a result, voter turnout was low.

A second disadvantage of referendums is the fact that the decision made by the people is not always implemented. This is yet to occur in the Republic of Ireland, however it has occurred elsewhere. An ideal example of this took place in Sweden in 1955, when the government

neglected to honour the people's decision to continue to drive on the left-hand side of the road, so they could import cars from Germany. More recently, in the last week, presidential elections in Zimbabwe are to be investigated due to reports of a violent campaign, intimidation of the electorate and an uncertain result, which have sparked international alarm. To consult and then disregard the judgment of the people is worse than never to have sought an opinion initially.

Some issues require deliberation and compromise rather than clear "yes" or "no" answers, referendums can restrict voters in this sense. Perhaps this provides a platform for the introduction of preferendums.

A preferendum is a referendum in which members of the electorate can state, in appropriate order, his or her level of preference for each of a number of proposals. There has been much debate surrounding the possible introduction of this form of governance in the Republic of Ireland, not to replace referendums, but to be used in circumstances when the degree of complexity associated with the topic is such, that only giving the voters the option of a simple 'yes' or 'no' answer would not suffice. We have yet to use a preferendum here in Ireland, this is despite the fact that situations have arisen with regard to Constitutional amendment, which perhaps warranted its introduction into Irish politics.

The theory supporting preferendums is simple, give the voter a wider array of options within which to convey his or her preferences and a more accurate judgement should prevail.

However, there are potential problems associated with the preferendum system. Such as, fears that a strong majority would never be obtained by a single option and then the one with the most votes would have to be implemented despite a minority of the electorate voting in favour of it. Also, preferendums may complicate the issue further by introducing more complexity and the possibility of confusion with the extra options given to the electorate, and

this may result in inconsistent voting. Despite our lack of experience of preferendums, we can still draw on many examples of their success from around the world for inspiration. For example, a preferendum was used in Newfoundland in 1951 to determine whether or not that state should join the Canadian Federation ([Govt. of Irl., Report of the Constitution review group, May 1996](#)), it resulted in a resounding majority been in favour of the amalgamation. Although there are no definite plans to introduce this form of decision-making into the Irish voting system at present, preferendums may come into being in the future, if as anticipated, the number of referendums held in this country is to increase. This may not be a bad thing for Ireland, however, the necessity of this development must be questioned since there are no obvious, recurring difficulties associated with our current straightforward referendum system.

In conclusion, referendums have played a substantial role in the history of the Republic of Ireland. The current system of requiring referendum approval in order to amend the constitution has been a resounding success and any modifications to this system should be considered carefully. Politics and the people, must always work in tandem, in order to ensure that fair, direct democracy shall reign. This will enable the people of Ireland to enjoy the privilege of directly affecting decisions regarding their Constitution and therefore their way of life, and this right should never be removed.



